

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

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KEVIN RAYMOND SULLIVANT,

CV 11-119-M-DWM-JCL

Plaintiff,

vs.

ORDER

SPECTRUM MEDICAL  
SERVICES, NURSE  
PRACTITIONER JUDY  
MUNSELL, RAVALLI  
COUNTY, and LT.  
SCOTT LEETE,

Defendants.

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Plaintiff Kevin Sullivant, appearing pro se, initiated this action under 42 U.S.C. § 1983 by filing a complaint on September 2, 2011. Mr. Sullivant, who is incarcerated at the Ravalli County Detention Center in Hamilton, Montana, challenges the conditions of his confinement. After Mr. Sullivant's complaint was screened in accordance with 28 U.S.C. §§ 1915 & 1915A, Mr. Sullivant was allowed to file an amended complaint, which he did on November 8, 2011. By order entered November 29, 2011, the Court directed that service be effected upon all of the named

Defendants.

Defendants Lt. Scott Leete and Ravalli County (“County Defendants”) filed their combined answer to Mr. Sullivan’s amended complaint on January 17, 2012.<sup>1</sup> On January 27, 2012, Mr. Sullivan filed a document titled “Response to Answer” addressing the various statements set forth in the County Defendants’ answer. In response, the County Defendants filed a motion asking the Court to strike Mr. Sullivan’s “Response to Answer” under Fed. R. Civ. P. 7(a)(7),(8)(b)(6) and (12)(f)(2).

The Court views Mr. Sullivan’s “Response to Answer” as a Fed. R. Civ. P. 7(a)(7) motion requesting leave to file a reply to the County Defendants’ answer. And, accordingly, the Court views the County Defendants’ motion to strike as a response to Mr. Sullivan’s motion requesting leave to file a reply.

A reply to an answer – not containing a counterclaim – is not permitted as of right. Thus, a party must seek leave of court to file a reply. Fed. R. Civ. P. 7(a)(7). Given the fact that an answer without a counterclaim is deemed automatically denied or avoided under Fed. R. Civ. P. 8(b)(6), a party must make a clear and convincing showing that a substantial reason or extraordinary circumstances compel the filing of

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<sup>1</sup> On January 27, 2102, Defendants Spectrum Medical Services and Nurse Practitioner Judy Munsell filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) which remains pending.

a reply. *See e.g. Fed. Deposit Ins. Corp. v. First National Finance Co.*, 587 F.2d 1009, 1012 (9<sup>th</sup> Cir. 1978); *Movietcolor Ltd. v. Eastman Kodak Co.*, 24 F.R.D. 325, 326 (S.D.N.Y. 1959). Mr. Sullivant has not made the requisite showing necessary to warrant leave to file a reply to the County Defendants’ answer. As accurately noted by the County Defendants, the assertions made by Mr. Sullivant in his “Response to Answer” merely reiterate the allegations set forth in his amended complaint. Therefore,

IT IS HEREBY ORDERED that Mr. Sullivant’s motion requesting leave to file a reply to the County Defendants’ answer – denominated “Response to Answer” (Dkt. 27) – is DENIED.

IT IS FURTHER ORDERED that the County Defendants’ Motion to Strike is DENIED AS MOOT.

DATED this 10<sup>th</sup> day of February, 2012.

/s/ Jeremiah C. Lynch  
Jeremiah C. Lynch  
United States Magistrate Judge